

2008

Buu Nguyen v. IHC Health Services, Inc., a Utah Corporation, dba Primary Children's Medical Center, University of Utah Hospitals and Clinics, University of Utah and State of Utah : Unknown

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

David Williams, Bradley Blackham; Snow, Christensen, and Martineau; Robert G. Wright, Brandon Hobbs; Richards, Brandt, Miller, and Nelson; Attorneys for Appellee.

Matthew H. Raty; Law Office of Matthew H. Raty, PC; Attorney for Appellant.

Recommended Citation

Legal Brief, *Nguyen v. IHC Health Services, Inc.*, No. 20080738 (Utah Court of Appeals, 2008).
https://digitalcommons.law.byu.edu/byu_ca3/1134

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

BUU NGUYEN,

Appellant and Plaintiff,

v.

IHC HEALTH SERVICES, INC., a
Utah Corporation, dba PRIMARY
CHILDREN'S MEDICAL CENTER,
UNIVERSITY OF UTAH HOSPITALS
AND CLINICS, UNIVERSITY OF
UTAH and STATE OF UTAH,

Appellees and
Defendants.

ADDENDUM

Appellate Case No. 20080738

District Case No. 010901469

Appeal from the Judgment of the Honorable Sandra N. Peuler,
Judge of the Third Judicial District Court, Salt Lake County, State of Utah

David Williams
Bradley Blackham
SNOW, CHRISTENSEN &
MARTINEAU
10 Exchange Place, Eleventh Floor
Salt Lake City, Utah 84145
*Attorneys for Defendant/Appellee
University of Utah*

Matthew H. Raty (#6635)
LAW OFFICE OF MATTHEW H. RATY, PC
9677 South 700 East, Suite
Sandy, Utah 84070
Telephone (801) 495-2252
Facsimile (801) 495-2262
Attorney for Plaintiff/Appellant Buu Nguyen

Robert G. Wright
Brandon Hobbs
RICHARDS, BRANDT, MILLER, &
NELSON
299 S. Main St., Ste 1500
Salt Lake City, UT 84110-2465
*Attorneys for Defendant/Appellee
Primary Children's Medical Center*

ADDENDUM

1. SUMMARY JUDGMENT ORDER, 08/15/2008, 3396-3399
2. ORDER STRIKING JOHN GOLDENRING, M.D. AS AN EXPERT WITNESS,
08/15/2008, 3392-3395
3. ORDER (SUMMARY JUDGMENT OF IIED), 08/14/2008, 3387-3391
4. ORDER (SUMMARY JUDGMENT OF PUNITIVE DAMAGES), 08/14/2008,
3381-3386
5. RULING, 07/29/2008, 2589-2597

Tab 1

FILED DISTRICT COURT
Third Judicial District

AUG 15 2008

By SALT LAKE COUNTY

Deputy Clerk

DAVID G. WILLIAMS (3481)
BRADLEY R. BLACKHAM (8703)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Defendants
University of Utah Hospitals and Clinics,
University of Utah and State of Utah
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

IN THE THIRD JUDICIAL COURT OF SALT LAKE COUNTY

STATE OF UTAH

BUU NGUYEN.,

Plaintiff,

vs.

PULMONETIC SYSTEMS, INC., a
Delaware Corporation, IHC HEALTH
SERVICES, INC., a Utah Corporation
dba PRIMARY CHILDREN'S
MEDICAL CENTER, UNIVERSITY
OF UTAH HOSPITALS AND
CLINICS, UNIVERSITY OF UTAH
AND STATE OF UTAH

Defendants.

SUMMARY JUDGMENT ORDER

Case No. 030901469

Judge Sandra N. Peuler

Defendant Primary Children's Medical Center's Motion for Summary Judgment and
Defendants University of Utah Hospitals and Clinics, University of Utah and State of Utah's

joinder in PCMC's Motion for Summary Judgment came before the Court for a hearing on August 1, 2008. Matthew H. Raty appeared on behalf of Plaintiff. Robert G. Wright and Brandon B. Hobbs from Richards, Brandt, Miller & Nelson appeared on behalf of Defendant Primary Children's Medical Center. David G. Williams and Bradley R. Blackham from Snow, Christensen & Martineau appeared on behalf of Defendants University of Utah Hospitals and Clinics, University of Utah and State of Utah.

The Court, having reviewed the relevant pleadings, having heard oral argument from counsel for the parties and for good cause appearing, concludes that Defendants Primary Children's Medical Center, University of Utah Hospitals and Clinics, University of Utah and State of Utah are entitled to summary judgment on Plaintiff's claims for negligence and failure to obtain informed consent.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

1. Defendant Primary Children Medical Center's Motion for Summary Judgment and Defendants University of Utah Hospitals and Clinics, University of Utah and State of Utah's joinder in that Motion are granted on the basis that Plaintiff has failed to offer admissible expert testimony to establish either a breach of the applicable standard of care or causation of Plaintiff's alleged damages;

2. That Plaintiff's claims and causes of action against Defendants Primary Children's Medical Center, University of Utah Hospitals and Clinics, University of Utah and State of Utah for negligence and failure to obtain informed consent are dismissed in their entirety with prejudice and on the merits;

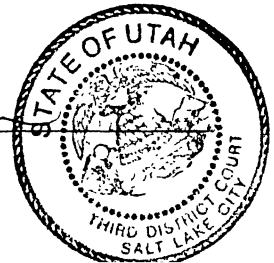
3. That Judgment be entered in favor of Defendants Primary Children's Medical Center, University of Utah Hospitals and Clinics, University of Utah and State of Utah;

4. That taxable costs, according to law, shall be awarded to Defendants Primary Children's Medical Center, University of Utah Hospitals and Clinics, University of Utah and State of Utah.

DATED this 15 day of August, 2008.

BY THE COURT:

By Sandra Peuler
Judge Sandra Peuler
District Court Judge



CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached **SUMMARY JUDGMENT ORDER** was served via email on this 31st day of July, 2008, on the following:

Mark C. McLachlan
MARK C. McLACHLAN & ASSOCIATES, L.C.
New England Professional Plaza
9677 South 700 East, Suite D
Sandy, Utah 84070
Attorneys for Plaintiff

Matthew H. Raty
LAW OFFICE OF MATTHEW H. RATY, P.C.
New England Professional Plaza
9677 South 700 East, Suite D
Sandy, Utah 84070
Attorneys for Plaintiff

Robert G. Wright
Brandon B. Hobbs
RICHARDS, BRANDT, MILLER & NELSON
Wells Fargo Center
299 South Main Street, 15th Floor
Salt Lake City, Utah 84111
Attorneys for Defendant
IHC Health Services, Inc., dba
Primary Children's Medical Center



Tab 2

FILED DISTRICT COURT
Third Judicial District

AUG 15 2008

SALT LAKE COUNTY
By  Deputy Clerk

DAVID G. WILLIAMS (3481)
BRADLEY R. BLACKHAM (8703)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Defendants
University of Utah Hospitals and Clinics,
University of Utah and State of Utah
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

IN THE THIRD JUDICIAL COURT OF SALT LAKE COUNTY

STATE OF UTAH

BUU NGUYEN.,
Plaintiff,

vs.

PULMONETIC SYSTEMS, INC., a
Delaware Corporation, IHC HEALTH
SERVICES, INC., a Utah Corporation
dba PRIMARY CHILDREN'S
MEDICAL CENTER, UNIVERSITY
OF UTAH HOSPITALS AND
CLINICS, UNIVERSITY OF UTAH
AND STATE OF UTAH

Defendants.

**ORDER STRIKING JOHN
GOLDENRING, M.D. AS AN
EXPERT WITNESS**

Case No. 030901469

Judge Sandra N. Peuler

Defendants University of Utah Hospitals and Clinics, University of Utah and State of
Utah's Motion in Limine to Strike John Goldenring, M.D. as an Expert Witness and Defendant

Primary Children's Medical Center's joinder in that Motion came before the Court for a hearing on July 23, 2008. Matthew H. Raty appeared on behalf of Plaintiff. David G. Williams and Bradley R. Blackham from Snow, Christensen & Martineau appeared on behalf of Defendants University of Utah Hospitals and Clinics, University of Utah and State of Utah (the University Defendants). Robert G. Wright and Brandon B. Hobbs from Richards, Brandt, Miller & Nelson appeared on behalf of Defendant Primary Children's Medical Center (PCMC).

The Court, having reviewed the relevant pleadings, having heard oral argument from counsel for the parties, having issued a written Ruling dated July 29, 2008, and for good cause appearing, concludes that Plaintiff's designated expert, Dr. John Goldenring, is not qualified to testify as an expert against either the University Defendants or PCMC on the standard of care for either of Plaintiff's two remaining claims and causes of action in this case. The Court further concludes that Dr. Goldenring is not qualified to testify as a causation expert against either the University Defendants or PCMC.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

1. The University Defendants' Motion in Limine to Strike John Goldenring, M.D. as an Expert Witness and PCMC's joinder in that Motion are granted for the reasons set forth in the Court's July 29, 2008 Ruling.
2. Dr. Goldenring shall not be allowed to testify at trial as an expert against either the University Defendants or PCMC on the standard of care with respect to Plaintiff's claim and cause of action for negligence.
3. Dr. Goldenring shall not be allowed to testify at trial as an expert against either

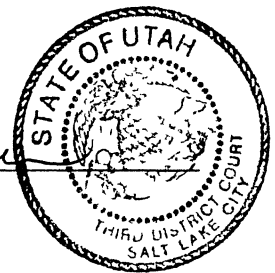
the University Defendants or PCMC on the standard of care with respect to Plaintiff's claim and cause of action for failure to obtain informed consent.

4. Dr. Goldenring shall not be allowed to testify as a causation expert against either the University Defendants or PCMC.

DATED this 15 day of August, 2008.

BY THE COURT:

By Sandra Peuler
Judge Sandra Peuler
District Court Judge



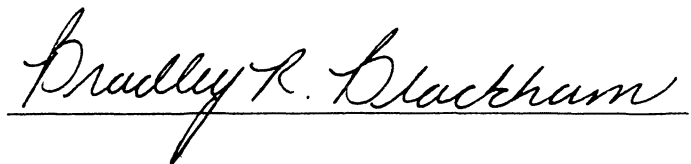
CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached **ORDER STRIKING JOHN GOLDENRING, M.D. AS AN EXPERT WITNESS** was served by via email on this 1st day of August, 2008, on the following:

Mark C. McLachlan
MARK C. McLACHLAN & ASSOCIATES, L.C.
New England Professional Plaza
9677 South 700 East, Suite D
Sandy, Utah 84070
Attorneys for Plaintiff

Matthew H. Raty
LAW OFFICE OF MATTHEW H. RATY, P.C.
New England Professional Plaza
9677 South 700 East, Suite D
Sandy, Utah 84070
Attorneys for Plaintiff

Robert G. Wright
Brandon B. Hobbs
RICHARDS, BRANDT, MILLER & NELSON
Wells Fargo Center
299 South Main Street, 15th Floor
Salt Lake City, Utah 84111
Attorneys for Defendant
IHC Health Services, Inc., dba
Primary Children's Medical Center

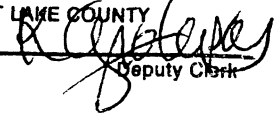


Bradley R. Blackham

Tab 3

FILED DISTRICT COURT
Third Judicial District

AUG 14 2008

By SALT LAKE COUNTY 
Deputy Clerk

ROBERT G. WRIGHT [5363]
BRANDON B. HOBBS [8206]
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for IHC Health Services, Inc.,
dba Primary Children's Medical Center
Wells Fargo Center, Fifteenth Floor
299 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Email: Robert-Wright@rbmn.com
Brandon-Hobbs@rbmn.com
Telephone: (801) 531-2000
Fax No.: (801) 532-5506

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

BUU NGUYEN,

Plaintiff,

vs.

IHC HEALTH SERVICES, INC., a Utah
Corporation, dba PRIMARY CHILDREN'S
MEDICAL CENTER, UNIVERSITY OF
UTAH HOSPITALS AND CLINICS,
UNIVERSITY OF UTAH and STATE OF
UTAH,

Defendants.

ORDER

Case No. 030901469
Judge Sandra Peuler

Defendant Primary Children's Medical Center's Motion for Partial Summary

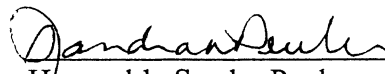
Jdugment Re: Intentional Infliction of Emotional Distress was heard by the Honorable Sandra Peuler on July 23, 2008. Plaintiff was represented by his counsel, Matthew Raty. Defendant PCMC was represented by its counsel, Brandon B. Hobbs and Robert G. Wright, RICHARDS

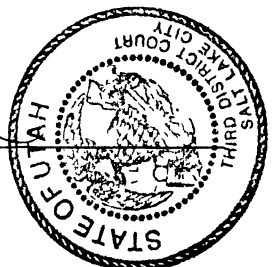
BRANDT MILLER & NELSON. Defendants University of Utah Hospitals and Clinics, University of Utah, and the State of Utah were represented by their counsel, David Williams and Bradley Blackham, SNOW CHRISTENSEN & MARTINEAU. The Court, having heard oral argument from the parties, having reviewed the relevant pleadings, and otherwise being fully advised, now makes and enters the following ruling and order:

ORDER

Defendant PCMC's Motion for Partial Summary Judgment Re: Intentional Infliction of Emotional Distress is GRANTED. Plaintiff has failed to establish by clear and convincing evidence a prima facie case of an intentional infliction of emotional distress, and the Court concludes that no genuine issue of material fact precludes entry of partial summary judgment in favor of Defendant PCMC and Defendants University of Utah Hospitals and Clinics, University of Utah, and the State of Utah. Plaintiff's claims for intentional infliction of emotional distress against all Defendants are therefore dismissed with prejudice and as a matter of law.

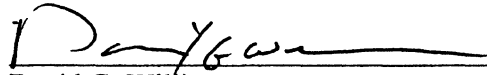
DATED this 14 day of August, 2008.


Honorable Sandra Peuler
Third District Court



APPROVED AS TO FORM:

Matthew H. Raty
Attorney for Plaintiff

A handwritten signature in black ink, appearing to read "D. Williams", written over a horizontal line.

David G. Williams
Bradley Blackham
*Attorneys for Defendant University of Utah
Hospitals & Clinics, University of Utah, and
State of Utah*

APPROVED AS TO FORM:

Matthew H. Raty
Attorney for Plaintiff

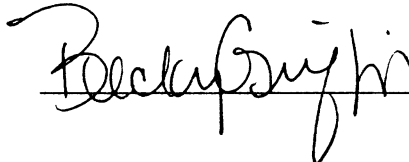
David G. Williams
Bradley Blackham
*Attorneys for Defendant University of Utah
Hospitals & Clinics, University of Utah, and
State of Utah*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 11 day of August, 2008, to the following:

Mark C. McLachlan
MARK C. MCLACHLAN & ASSOCIATES, LC
Matthew H. Raty
LAW OFFICE OF MATTHEW H. RATY, PC
New England Professional Plaza
9677 South 700 East, Suite D
Sandy, Utah 84070
Attorneys for Plaintiff

David G. Williams
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Suite 1100
Salt Lake City, Utah 84111
**Attorneys for University of Utah Hospitals and
Clinics, University of Utah and State of Utah**



A handwritten signature in cursive script, appearing to read "Becka Guynn", is written over a horizontal line.

Tab 4

FILED DISTRICT COURT
Third Judicial District

AUG 14 2008

SALT LAKE COUNTY
By R. Choleas Deputy Clerk

ROBERT G. WRIGHT [5363]
BRANDON B. HOBBS [8206]
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for IHC Health Services, Inc.,
dba Primary Children's Medical Center
Wells Fargo Center, Fifteenth Floor
299 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Email: Robert-Wright@rbmn.com
Brandon-Hobbs@rbmn.com
Telephone: (801) 531-2000
Fax No.: (801) 532-5506

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

BUU NGUYEN,

Plaintiff,

vs.

IHC HEALTH SERVICES, INC., a Utah
Corporation, dba PRIMARY CHILDREN's
MEDICAL CENTER, UNIVERSITY OF
UTAH HOSPITALS AND CLINICS,
UNIVERSITY OF UTAH and STATE OF
UTAH,

Defendants.

ORDER

Case No. 030901469
Judge Sandra Peuler

Defendant Primary Children's Medical Center's Motion for Partial Summary

Jdugment Re: Punitive Damages was heard by the Honorable Sandra Peuler on July 23, 2008.

Plaintiff was represented by his counsel, Matthew Raty. Defendant PCMC was represented by its
counsel, Brandon B. Hobbs and Robert G. Wright, RICHARDS BRANDT MILLER & NELSON.

Defendants University of Utah Hospitals and Clinics, University of Utah, and the State of Utah were represented by their counsel, David Williams and Bradley Blackham, SNOW CHRISTENSEN & MARTINEAU. The Court, having heard oral argument from the parties, having reviewed the relevant pleadings, and otherwise being fully advised, now makes and enters the following ruling and order:

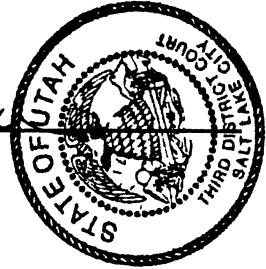
ORDER

Defendant PCMC's Motion for Partial Summary Judgment Re: Punitive Damages is GRANTED. This Court concludes that no genuine issue of material fact exists regarding the validity of Plaintiff's punitive damages claim against Defendant PCMC, and therefore dismisses any and all claims for punitive damages against Defendant PCMC with prejudice and as a matter of law.

Defendants University of Utah Hospitals and Clinics, University of Utah, and the State of Utah's Joinder in Defendant PCMC's Motion is also GRANTED for the reasons stated in Defendant PCMC's motion, as well as Defendant University of Utah's joinder in that motion. This Court also concludes that the Governmental Immunity Act specifically precludes punitive damages claims against Defendant University of Utah Hospitals and Clinics, University of Utah, and the State of Utah. Therefore, the Court dismisses any and all claims for punitive damages against Defendants University of Utah Hospitals and Clinics, University of Utah, and the State of Utah with prejudice and as a matter of law.

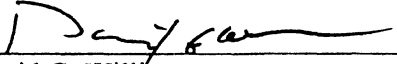
DATED this 14 ^{August} day of July, 2008.

Sandra Peuler
Honorable Sandra Peuler
Third District Court



APPROVED AS TO FORM:

Matthew H. Raty
Attorney for Plaintiff



David G. Williams
Bradley Blackham
*Attorneys for Defendant University of Utah
Hospitals & Clinics, University of Utah, and
State of Utah*

APPROVED AS TO FORM:

Matthew H. Raty
Attorney for Plaintiff

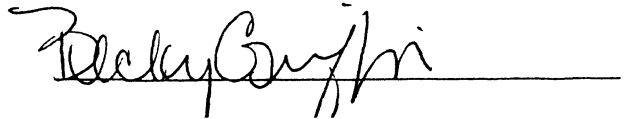
David G. Williams
Bradley Blackham
*Attorneys for Defendant University of Utah
Hospitals & Clinics, University of Utah, and
State of Utah*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 11 day of ~~July~~^{August}, 2008, to the following:

Mark C. McLachlan
MARK C. MCLACHLAN & ASSOCIATES, LC
Matthew H. Raty
LAW OFFICE OF MATTHEW H. RATY, PC
New England Professional Plaza
9677 South 700 East, Suite D
Sandy, Utah 84070
Attorneys for Plaintiff

David G. Williams
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Suite 1100
Salt Lake City, Utah 84111
**Attorneys for University of Utah Hospitals and
Clinics, University of Utah and State of Utah**

A handwritten signature in black ink, appearing to read "David G. Williams", is written over a horizontal line.

Tab 5

**THIRD DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT**

BUU NGUYEN,

Plaintiff,

vs.

**PULMONETIC SYSTEMS, INC., a
Delaware Corporation, IHC HEALTH
SERVICES INC., a Utah Corporation
dba PRIMARY CHILDREN'S MEDICAL
CENTER, UNIVERSITY OF UTAH
HOSPITALS AND CLINICS,
UNIVERSITY OF UTAH and STATE OF
UTAH**

Defendants.

RULING

CASE NO. 030901469

JUDGE SANDRA N. PEULER

Oral arguments were heard on July 23, 2008, after which defendants' (University of Utah Hospitals and Clinics, University of Utah and Primary Children's Medical Center) motions in limine to strike John Goldenring, M.D. as an expert witness were taken under advisement. Upon consideration of the parties' oral arguments and written submissions, I find that Dr. Goldenring is not, in this case, qualified to testify as an expert on the relevant standard of care; I do not reach this conclusion lightly as I am fully cognizant of the potential effects such decision may have on Mr. Nguyen's case. That said, however, I am unable to conclude that Dr. Goldenring's general knowledge of pediatrics renders him competent to testify on the standard of care applicable to Dr. Witte, a pediatrician with subspecialties in pediatric critical care and pediatric pulmonology. Additionally, Dr. Goldenring lacks the qualifications to render an expert opinion regarding Primary Children's Medical

Center staff, or the hospital's administration of its testing and evaluation of the ventilator.

1. Rule 702

Utah Rules of Evidence 702 sets forth the standard under which the Court should determine the admissibility of expert testimony. Under this rule, the trial court has discretion to determine the qualifications of an expert witness to give opinions on particular matters. Schindler v Schindler, 774 P.2d 85 (Ut. Ct. App. 1989). For the following reasons I find that pursuant to Rule 702, Dr. Goldenring is not qualified to testify as an expert about the standard of care relating to Dr. Witte and her decision to order a CT scan, use of the Pulmonetic ventilator, and failure to use an alternative ventilating method. I also find that Dr. Goldenring is not qualified to render an expert opinion about the standard of care of both Dr. Witte and Primary Children's Medical Center's informed consent. Additionally, I do not find Dr. Goldenring qualified to testify as to the hospital's failure to follow hospital protocol guidelines relative to the evaluation of the ventilator. Finally, Dr. Goldenring is not qualified to testify as to the causation element of plaintiff's negligence claim since his conclusions are speculative and lack medical certainty.

2. Dr. Goldenring and Dr. Witte Possess Differing Medical Specialties

Plaintiff designates Dr. John Goldenring as a standard of care expert witness against Dr. Witte.

In general, a practitioner from one specialty is not competent to testify as an expert

against a practitioner from another specialty. Burton v Youngblood, 711 P.2d 245, 248 (Utah 1985). Here, while Dr. Witte and Dr. Goldenring are both board certified pediatricians, Dr. Witte holds sub-specialty certifications in both pediatric critical care medicine and pediatric pulmonology. Dr. Witte Deposition, p.33. Dr. Witte practices as a critical care physician, and pediatric critical care and pulmonology are two areas crucial to an understanding of this case. Dr. Goldenring, however, admittedly has no expert knowledge in these areas. Dr. Goldenring Deposition, pp. 22-23, 30, 43, 56, 59, 94-95, 110.

While an exception exists that allows an expert of one speciality to testify against a member of another specialty, foundation must be laid to show that the method of treatment and standard of care is common to both specialities. Youngblood, at 248. No such showing has been made by plaintiff in this case.

3. The CT Scan

Plaintiff's offer Dr. Goldenring's testimony in support of plaintiff's criticism of Dr. Witte's decision to obtain a CT scan of patient Derek Nguyen. Dr. Witte testified that her decision to obtain the scan was prompted by her experience in critical care and Derek's concerningly high intracranial pressures ("ICP's) and low cerebral perfusion pressures ("CPP's). Dr. Witte Deposition, pp. 62-64, 139-141.

Dr. Goldenring, admits he is not an expert in critical care, ICP or CPP levels and testified that in any review and management of those levels he would rely upon the

expertise of a critical care physician or neurosurgeon. Dr. Goldenring Deposition, pp. 30, 43.

Given that Dr. Witte's decision to order Derek's CT scan was driven by her experience in critical care and her assessment of ICP and CPP pressures, Dr. Goldenring's lack of expertise in any of those areas is highly significant. Thus, because the crucial factors which Dr. Witte weighed in her decision to transport Derek for the CT scan are outside the scope of Dr. Goldenring's expertise, I conclude he is not qualified to testify as an expert on the standard of care for ordering the CT scan.

4. The Pulmonetic Ventilator

Plaintiff offers Dr. Goldenring as an expert to support the claim that Dr. Witte breached the standard of care by choosing to utilize the Pulmonetic ventilator to transport Derek, a critically ill patient.

I conclude that Dr. Goldenring does not qualify as an expert in this matter. He admits he is not qualified to render opinions concerning the selection and use of the ventilator. Specifically, in his deposition Dr. Goldenring states that he is not a ventilator expert and has no experience with the specifics of the Pulmonetic ventilator utilized in this case. Dr. Goldenring Deposition, pp. 56, 59. Additionally, I find that Dr. Goldenring is not qualified to testify that Dr. Witte breached the standard of care by using the Pulmonetic ventilator on a critically ill patient since he lacks expertise on the specific needs of critical care patients.

5. Alternative Methods Of Ventilation

Next, plaintiff offers Dr. Goldenring's as an expert on alternative methods of ventilation; namely, the use of manual ventilation or "hand-bagging".

In his deposition, Dr. Goldenring admits that he is not an expert on ventilators and has never used the Pulmonetic ventilator utilized in this case. Dr. Goldenring Deposition, pp. 56, 59. Additionally, he admits he has not used any active hospital privileges since 1994. Dr. Goldenring Deposition, pp. 104-104. Based upon these admissions I cannot conclude that Dr. Goldenring should be allowed to testify as an expert on the issue of whether a critically ill patient could have been manually ventilated during transport. Dr. Goldenring's experience, if any, in this area is extremely limited, not current, and not relevant to the specific circumstances of this case.

6. Informed Consent

Plaintiff offers Dr. Goldenring as an expert to testify that Dr. Witte and Primary Children's Medical Center failed to obtain informed consent prior to Derek's placement on the Pulmonetic ventilator. However, in order for Dr. Goldenring to testify as to such matters he must expertly consider and address all factors that were before Dr. Witte at the crucial time including an assessment of Derek's overall condition and the risks inherent in failing to transport him for the CT scan.

As established above, Dr. Goldenring is not qualified to testify as an expert on critical care, pulmonology, ICP/CPP levels or ventilators. Given this lack of expertise I find

it improper for Dr. Goldenring to testify as an expert on informed consent since he cannot expertly address what information should or should not have been conveyed about the overall risks and benefits of the transport. Furthermore, the issue of informed consent in this case goes to the risks and benefits of the proposed treatment and not the status of the hospital review process of the ventilator. Dr. Witte testified that her decision and ability to use the FDA approved Pulmonetic ventilator was based solely upon Derek's needs and was not dependent on Primary Children Medical Center's administrative review process Dr Witte Deposition, pp. 40-41, 81-82. Given that Dr. Goldenring is not qualified to testify as to the risks and benefits of the treatment his testimony as an expert in this matter is not admissible.

7. The Team Model

Next, plaintiff offers Dr. Goldenring as an expert on Dr. Witte's alleged failure to follow the applicable standard of care by neglecting to consult with her medical "team" prior to transporting and ventilating Derek. While plaintiff's team theory is creative, it is ultimately unpersuasive. Given my conclusion that Dr. Goldenring is not qualified to testify as to Dr. Witte's individual standard of care, I find him equally unqualified to testify to Dr. Witte's medical team, the employees of Primary Children's Medical Center, and their standard of care. Dr. Goldenring offers no claims of expertise in nursing or respiratory care---areas in which Dr. Witte's team members are qualified. Since he is not qualified to offer an opinion as to the standard of care for any one of the individual team members,

there is no basis upon which he can offer any opinion relative to the expertise of the entire team.

8. Primary Children's Medical Center Policies

Plaintiff offers Dr. Goldenring's testimony as an expert on Primary Children's Medical Center's failure to follow hospital protocol in the use of the ventilator. However, the undisputed facts demonstrate that the ventilator was FDA approved, and that Dr. Witte's decision to utilize it on Derek was not part of the clinical hospital evaluation, but upon factors in Derek's case which made its use necessary. However, if the hospital evaluation process is considered, Dr. Goldenring has not been involved in establishing protocols for clinical evaluations or testing of hospital equipment. Because of his lack of expertise in that area, I conclude that Dr. Goldenring's testimony is not admissible as to the standard of care applicable to Primary Children's Medical Center.

9. Causation

Finally, plaintiff designates Dr. Goldenring as its causation expert to establish that the use of the Pulmonetic ventilator was a proximate cause of Derek's death. In Utah, the need for expert testimony to establish a causal link depends on the nature of the injury. Beard v K-Mart Corp, 2000 UT App 285, ¶ 16; 12 P.3d 1015. In this case, where the injury involves complex medical concepts and factors beyond an ordinary lay person's knowledge expert testimony is appropriate. Fox v Brigham Young University, 2007 UT App 406, ¶ 22; 176 P.3d 446.

Based upon his deposition testimony, I find Dr. Goldenring's causation conclusions to be speculative and inadmissible since they lack the requisite degree of medical certainty necessary to qualify him as a causation expert. In his deposition, Dr. Goldenring agrees that it is "pure speculation" as to what Derek's status would have been absent the ventilator malfunction. Dr. Goldenring Deposition, pg. 78. Additionally, Dr. Goldenring testified that while without the ventilator malfunction Derek had a chance of survival he did not know "how to put a number specifically on that." Dr. Goldenring Deposition, pp. 78-79. These statements clearly show the speculative nature of Dr. Goldenring's testimony and his inability to quantify Derek's lost chance of survival.

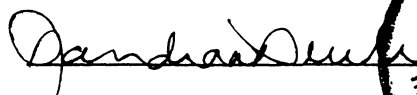
For these reasons I conclude that Dr. Goldenring is not qualified to testify as a standard of care or causation expert against Dr. Witte, the University of Utah, the University of Utah Hospitals and Clinics and Primary Children's Medical Center.

Defendants' motion in limine to strike the expert testimony of Dr. Goldenring is hereby GRANTED.

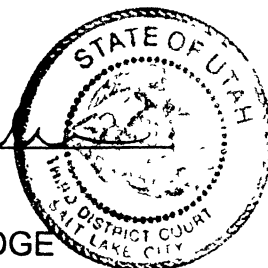
Defendants' counsel to prepare the appropriate Order for submission to the Court.

Dated this 29 day of July, 2008.

BY THE COURT:



SANDRA N. PEULER
DISTRICT COURT JUDGE



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 030901469 by the method and on the date specified.

METHOD	NAME
Mail	BRANDON B HOBBS Attorney DEF 299 S MAIN ST 15TH FLOOR SALT LAKE CITY, UT 84111
Mail	MATTHEW H RATY Attorney PLA 9677 S 700 E STE D SANDY UT 84070
Mail	DAVID G WILLIAMS Attorney DEF 10 EXCHANGE PLACE 11TH FLR POB 45000 SALT LAKE CITY UT 84145
Mail	ROBERT G WRIGHT Attorney DEF 299 S MAIN ST 15TH FLOOR SALT LAKE CITY UT 84111

Dated this 29 day of July, 2008.



Deputy Court Clerk